



POLICE DEPARTMENT

June 3, 2010

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Nancy Hurd  
Tax Registry No. 899366  
Housing Borough Manhattan  
Disciplinary Case No. 84547/08  
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The above-named member of the Department appeared before the Court on March 5, 2010, charged with the following:

1. Said Police Officer Nancy Hurd, assigned to the 32<sup>nd</sup> Precinct, on or about September 19, 2008, while off-duty, at approximately 2230 hours, in the vicinity of [REDACTED], in [REDACTED], New York, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said police officer after being told to leave the area and go home by [REDACTED] Police Officer Shawn Barry who was present at the above location to investigate a report of a loud and disorderly party, did not comply, remained at the location and made a remark about the need for a search warrant as the [REDACTED] Police Officer conducted his investigation. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT PROHIBITED CONDUCT

2. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]

3. Said Police Officer Nancy Hurd, assigned to the 32<sup>nd</sup> Precinct, on or about September 19, 2008, did fail and neglect to properly safeguard her firearm, as required. (*As amended*)

P.G. 204-08, Page 2, Paragraph 7 FIREARMS GENERAL REGULATIONS

COURTESY • PROFESSIONALISM • RESPECT

The Department was represented by Michelle Alleyne, Esq., Department Advocate's Office. The Respondent was represented by Michael Martinez, Esq., and Cary London, Esq.

The Respondent, through her counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

### DECISION

The Respondent is found Guilty of Specification Nos. 1 and 3. Specification No. 2 was dismissed at the outset of the trial upon motion of the Department and consent of the Respondent.

### SUMMARY OF EVIDENCE PRESENTED

#### Introductory Note

The Department did not present any witnesses with first-hand knowledge of the events. The lead investigator testified on the Department's direct case and the Respondent's official Department interview was admitted into evidence. For her case, the Respondent testified on her own behalf. The Department stated that it was relying on her testimony also to prove the case against her. For clarity, in this decision, a summary of the interview has been placed after a summary of the Respondent's testimony.

The Department's Case

The Department called Sergeant Arthur Beal as a witness.

Sergeant Arthur Beal

Beal was assigned to Manhattan North Investigations. Around September-October 2008, Beal was assigned an investigation concerning the Respondent. Another investigator had handled it first. The matter concerned a post-arrest suspension. The arresting agency was the [REDACTED] Department ([REDACTED] PD) in [REDACTED] County. Beal stated that [REDACTED] PD had responded to a "noise dispute" at the residence of, he believed, [REDACTED]. [REDACTED]'s children were holding the party or get-together. The police were there "to probably shut the party down."

Beal believed that the Respondent was charged with obstruction of governmental administration and possibly resisting arrest. Officer Barry was the arresting officer. Beal monitored the criminal court proceedings for the Respondent, and learned that the People declined to prosecute.

Beal testified that the Respondent submitted to an official Department interview by Manhattan North Investigations (see Department Exhibit [DX] 1, recording of interview; DX 1a, transcript). Based on his investigation and the interview, Beal concluded that the Respondent failed to safeguard her service weapon. Beal testified that [REDACTED] had been arrested and received a desk appearance ticket (DAT). The Respondent asked [REDACTED] to retrieve her purse because she was concerned that [REDACTED] PD would enter her home and "get it on her," that is, that [REDACTED] PD would take her firearm. Beal testified that [REDACTED] did as the Respondent asked. Bronx Investigations, which worked on the original call-out, recovered the weapon.



The Respondent's Case

The Respondent testified on her own behalf.

The Respondent

The Respondent testified that she had worked for the Department for 19 years. Before her duty status was changed to modified as a result of the incident in question, the Respondent was a youth officer in the 32 Precinct for the majority of her career.

The Respondent testified that in September 2008, she lived on [REDACTED] in [REDACTED], New York, with her three children, who ranged in age from 10 to 19 at the time of trial. At approximately 9:00-9:30 p.m. on September 19, 2008, the Respondent received a call from her neighbor, [REDACTED]). The Respondent knew [REDACTED] for about nine years. [REDACTED] lived a few houses away -- a two-minute distance -- and babysat the Respondent's children. [REDACTED] lived with her husband and four children, two of whom were [REDACTED] and [REDACTED].

The Respondent said that [REDACTED] was "like in a panic state" and said that the police were at her home for a noise complaint. [REDACTED] asked the Respondent to come over. The Respondent went to [REDACTED]'s home because they were close and because the Respondent was worried that [REDACTED] might have an asthma attack, a common occurrence for her friend.

The Respondent had just taken a bath; she was wearing a long loungewear-type gown and black flip-flops. She had not heard any noise. When she arrived at the [REDACTED] residence, she did not find a big party. She denied there was a party at all, calling it a "gathering." [REDACTED]'s son [REDACTED] had borrowed the Respondent's fire pit and was having a few friends over. Including the [REDACTED] there were about six people present.

The Respondent testified that six or seven [REDACTED] PD officers were present. She asserted that [REDACTED] PD was known for "busting in people house and taking things out their homes." The Respondent was aware of a lawsuit alleging this misconduct. She also knew another New York City Police Department (NYPD) police officer that lived in [REDACTED]. This officer told the Respondent that [REDACTED] PD officers entered her home and took prescription medication. Additionally, the Respondent had asked the chief of the [REDACTED] PD to stop harassing her. One day, [REDACTED] PD officers claimed that someone was robbing the Respondent's house. The Respondent testified that nobody had been at her house. Nevertheless, [REDACTED] PD gave her a summons for her barking dog.

The Respondent testified that she asked [REDACTED] who was in "a state of shock," if she was okay. While in the [REDACTED]' driveway, the Respondent heard a male voice say "[W]ho are you"? The Respondent was unsure who said this and whether he was speaking to her, but she responded that she was Nancy Hurd, a police officer in the NYPD. The Respondent announced that she was present to ensure that [REDACTED] was all right. Someone – the Respondent asserted that she did not know whether he was a police officer – sarcastically replied to her, "[G]o home."

The Respondent testified that the police officers went toward the back of the house. [REDACTED], in a soft voice, said "[REDACTED]." The Respondent went to the backyard to check on [REDACTED]. She observed him and three friends sitting on the unlit fire pit. On direct examination, the Respondent testified that they appeared to be in shock as well, although on cross-examination she described them as "a little scared" but "safe."

The Respondent also observed two police officers looking in the backyard garbage cans. The Respondent "spontaneously" remarked, "Don't you all need a search warrant to be looking in people's garbage cans"? She said this in a normal voice.



The Respondent testified that the [REDACTED] PD officers got upset at her remark. They threw the cans down and began to leave. The Respondent said, "[T]his is a mess I am going home and get back in my bed." Officer Barry was walking in front of her approximately 25 feet away. He turned around and yelled, telling the Respondent not to walk behind him. The Respondent apologized but thought to herself, "[W]ell, how far do he want me to be like you could put like a boat in between us."

The Respondent testified that Barry turned around and said, "[Y]ou know what." He walked back toward her, grabbed her arm, twisted it, and threw her onto the ground in the backyard. Someone else kicked her in the side of the body, and a third person punched her in the face. The next-door neighbors came running up to the Respondent and asked if she wanted them to call the police. The Respondent told them not to. She screamed from the pain in her arm, and Barry stopped twisting it. It felt like it was out of the socket. The [REDACTED] PD officers picked her up and placed her in the back of their vehicle.

The Respondent was taken to the [REDACTED] police station and placed in a cell. The Respondent described her condition at the time as "a hot mess." Her shoulder was in pain; she could not lift her arm and had grass all over her body. [REDACTED] PD ignored her requests to be taken to the emergency room (ER) or for a paramedic.

[REDACTED] had also been taken into custody and was placed in the other cell. He was charged with endangering the welfare of a child and allowed to leave the police station, although the Respondent did not know whether he received a summons or DAT. On direct examination, the Respondent testified that she asked [REDACTED] to get her pocketbook from her bedroom and bring it to the [REDACTED] PD station. On cross-examination, she did not recall if she told [REDACTED] where in her house the pocketbook was located, but stated that he probably knew to look in the bedroom.



In the Respondent's pocketbook was her .38 caliber revolver, along with her cell phone and wallet. [REDACTED] had been to her home before and knew where her bedroom was. She asked him to do this because [REDACTED] PD would have entered her residence and stolen her gun. She believed this because of their past corruption and how they had treated her at the [REDACTED] home. Thus, she "just knew" they were going to take her gun. The Respondent testified that she asked to make a phone call and [REDACTED] PD did not afford her that opportunity. After that and their refusal of medical treatment, the Respondent thought it best not to say anything else. Therefore, she did not tell any of the [REDACTED] officers that her gun was in her residence. She felt that the best way at the time to secure her firearm was to ask [REDACTED] to bring it to her. That way, she would know exactly where it was.

The Respondent was released from custody about five hours later. Her children were with [REDACTED]. She went to the ER and was diagnosed with a rotator cuff tear with hemorrhaging and fluid buildup. She attended physical therapy and saw "a specialist." The District Attorney's Office dismissed her criminal case and she filed a civil action against the municipality.

On cross-examination, the Respondent stated that her children were in their bedrooms when [REDACTED] called. The children wanted to come with her but she instructed them to stay home. When she left, the front door was closed but the sliding back door remained open. The front door had a "slam lock" function but the Respondent was unsure whether it was engaged.

The Respondent stated that another reason she went to the [REDACTED] residence was that she believed [REDACTED] was the only adult home at the time.

The Respondent testified that there were flood lights in the backyard.

The Respondent stated that she did not turn to look at the male voice. She assumed it was a police officer and that the voice was directed to her. No one at the scene told her that,



notwithstanding her police officer status, the [REDACTED] PD would deal with the situation and that the Respondent needed to go home. The person that told her to go home was a different male voice than the person that asked who she was. The voices came from opposite directions. The Respondent agreed that in response to the "go home" statement, she said she was an NYPD officer and was only there to help her friend. She admitted that [REDACTED] did not appear to be injured, but she was frightened. The Respondent did not move her away from the scene.

The Respondent testified that there were other individuals at the scene as well besides [REDACTED] and the [REDACTED] PD officers. [REDACTED], [REDACTED]'s daughter, and other neighbors or bystanders may have been either present or watching from the sidelines.

The Respondent agreed that once she saw that [REDACTED] was all right, she did not go back and tell [REDACTED]. The Respondent noted that "it went from seeing [REDACTED] and if I am not mistaken I said [REDACTED] you okay . . . then I looked I saw the officers and I was like don't you all need a search warrant."

The Respondent testified that she had placed her gun inside her pocketbook and removed the ammunition. She generally placed the pocketbook on a hanger in the closet or the doorknob. She also had a gray box in the attic where she usually placed her firearm "before I go to sleep or whatever." She agreed that her children were in the house when her gun was in her pocketbook.

The Respondent did not tell [REDACTED] that her weapon was inside the purse. The Respondent "knew" that [REDACTED] went to the Respondent's residence to pick up the children by the time [REDACTED] went to get the purse.

The Respondent knew that [REDACTED] returned to the [REDACTED] PD station with her pocketbook because she heard her cell phone ring. She asked the officer if he had her bag and he said yes.



The Respondent testified that the duty captain from the NYPD arrived when she was still in [REDACTED] PD custody. He told her to "get back in the cells" and that she was being "suspended" and "modified." She indicated that the duty captain took possession of her firearm. She got her pocketbook back after she was released from custody.

On re-direct examination, the Respondent stated that her gun was unloaded when [REDACTED] brought it to the [REDACTED] PD station. On re-cross-examination, she testified that her practice was to place the ammunition in the pocketbook as well.

Upon questioning by the Court, the Respondent clarified that she generally placed the .38 caliber Smith & Wesson revolver in the big part of the bag and the ammunition in the "zipper part" of the bag. She testified that had she been allowed to make a phone call at the [REDACTED] PD station, she would have known the number for her supervisor or delegate by memory.

#### Official Department Interview of the Respondent

The Respondent was interviewed on April 22, 2009. Beal conducted the interview.

The Respondent stated that she was not working on September 19, 2008. She believed it was her regular day off. At approximately 9:30-10:00 p.m., she received a call from her neighbor, [REDACTED]. She stated that the police were at her house for a noise complaint. [REDACTED] lived with her husband, [REDACTED], and two of her children: [REDACTED] who was post-high school, and [REDACTED] who was in high school. [REDACTED] was in a "panic." The Respondent was later told that when [REDACTED] answered the door for the police, they pushed her out of the way, and searched the closet and laundry room.

The Respondent stated that the [REDACTED]' porch light and backyard flood light were on.

The Respondent did not see any alcohol at the party. [REDACTED] who was holding the party, did not have music playing.

The Respondent stated that one of the officers said, "[W]ho are you?" She turned around and identified herself as Officer Hurd of the NYPD. She said she lived around the corner. When another officer said, "[G]o home" (the Respondent used an exasperated or sarcastic tone on the recording), the Respondent replied, "[N]o, I'm here out of concern for my friend, that's it."

The Respondent said that when she observed the officers going through the garbage cans, she remarked, "[N]ow y'all know y'all need a search warrant." She described her tone as "a ooh type of thing," i.e., in a knowing rather than accusatory manner.

The Respondent asserted that the officers continued to beat her even after she said "please put the cuffs on."

The Respondent asserted that one of the officers, Grecco, said, "[S]ee Nancy that's what you get for opening your mouth." Grecco had pulled her over one morning when she went through a stop sign.

The Respondent stated that when she got to the cell on the night of the incident, Barry said to her, "[T]his is what you get for making a police complaint." She told him that she had never made a complaint against him.

The Respondent stated that in the cells, [REDACTED] asked the officer why he had been arrested. The officer answered that the arrest was for endangering the welfare of a child "because your kids had liquor." [REDACTED] replied that he did not know they had alcohol.

The Respondent stated that in the charges against her, Barry claimed that she bumped him on his gun side.



The Respondent mentioned that she asked [REDACTED] to get her pocketbook because she did not want either her gun or wallet "to be gone when [she] came back." She did not trust the officers. She believed she told [REDACTED] to enter her bedroom and get the bag. He brought it to the officers at the station, "that was the whole purpose." The Respondent believed she was safeguarding the weapon by having [REDACTED] retrieve it, even though she admitted it should not have been in her purse.

### FINDINGS AND ANALYSIS

#### Specification No. 1

The Respondent is charged with acting contrary to the good order, efficiency and discipline of the Department when she allegedly failed to leave the scene of a police investigation and made a remark about the necessity of a warrant. The incident took place in the [REDACTED] of [REDACTED] in [REDACTED] County near the Respondent's home. The police officers from the [REDACTED] Police Department did not appear at trial – the parties disagreed as to whether this was a result of legal advice because of litigation against the [REDACTED] PD, or whether they simply refused to do so. Nevertheless, the only evidence against the Respondent was her trial testimony and her official Department interview (DX 1 & 1a).

The Respondent testified that her neighbor, [REDACTED], called her home and said the police were at her house. The Respondent's understanding was that somebody made a noise complaint. She went to the [REDACTED] residence, two doors down, because, for one thing, she was worried about [REDACTED]'s asthma. The Respondent testified that there were [REDACTED] PD officers in the [REDACTED]' yard. She heard a male voice state, "Who are you?," and she identified herself as a police officer in the NYPD. A different male voice sarcastically replied, "Go home." The

Respondent, in describing the comment at trial, used a tone of voice that suggested exasperation or irritation.

The Respondent did not leave the [REDACTED]' yard. She announced that she was there to make sure [REDACTED] was okay. [REDACTED] had expressed concern over her son, [REDACTED] and the Respondent went toward the back of the house to see what was going on with him. There, she saw [REDACTED] PD officers sifting through garbage cans. The Respondent remarked, "Don't you need a warrant for that?"

The Respondent argued that she had every right to remain on the scene, as an interested citizen. The Court disagrees. The evidence at trial showed that the [REDACTED] PD was conducting an investigation of a noise complaint at the [REDACTED] residence, and that [REDACTED] PD officers gave the Respondent an order to leave the premises. The Respondent claimed she had a lack of confidence in the [REDACTED] PD. That issue is beyond the purview of this Court. Whether the officers spoke rudely to the Respondent is also beyond this Court's purview. It is unnecessary to consider the Respondent's remark that the [REDACTED] PD officers needed a warrant to look through the garbage cans. The fact remains that once the [REDACTED] PD officers lawfully told her to leave the [REDACTED]' property, she should have done so without further incident. Instead, she refused and told the officers that she was there to look into [REDACTED]'s wellbeing. By her own account, she identified herself as an NYPD officer but the [REDACTED] PD told her to go home anyway. Her claim that no one at the scene specifically told her that, although she was a New York City police officer she had to go home anyway, is unavailing because she acknowledged that she was told to leave by on-duty [REDACTED] PD officers addressing the incident. Her failure to follow the directions of on-duty officers was contrary to the good order, efficiency and discipline of the Department and the Court finds the Respondent Guilty of Specification 1.



Specification No. 3

The Respondent is charged with failing to secure her firearm. When the Respondent left her home on the evening of September 19, 2008, to go to the [REDACTED] residence, upon [REDACTED]'s request, the Respondent left her firearm unloaded in her pocketbook. The ammunition was in a separate part of the pocketbook and the pocketbook was left in the Respondent's bedroom. After she was arrested, she asked [REDACTED], [REDACTED]'s husband, to go to her home, retrieve her pocketbook, and bring it to the Respondent at the [REDACTED] police station. The Respondent asserted that she did not tell the [REDACTED] PD officers about her firearm because she feared the [REDACTED] PD's reputation for misconduct and what she knew herself of their wrongdoing.

The Court rejects the Respondent's claim that these beliefs justified allowing an untrained civilian to take possession of her firearm. Just because the [REDACTED] PD had been accused of serious misconduct did not justify the Respondent's belief that those officers would do something nefarious with her gun. Notably, the Respondent testified that she identified herself as an NYPD officer when she first encountered the [REDACTED] PD officers at the [REDACTED] residence. If the [REDACTED] PD wanted to steal the Respondent's weapon or accuse her of brandishing it, they could have done so at the outset or after she was arrested. They also could have done so once [REDACTED] brought the weapon to the [REDACTED] PD police station. In any event, the Respondent had other options, such as asking [REDACTED] to call her command or delegate; she testified that she knew the phone numbers for her supervisor and delegate by heart.

Furthermore, the Respondent failed to safeguard her firearm when she left her home to go to the [REDACTED]. By her own admission, she left her weapon unloaded but unsecured, in her pocketbook, which was located on the floor of her bedroom. When the Respondent walked to the [REDACTED] residence, her three children remained at home. Regardless of whether it was proper

to have [REDACTED] pick up her pocketbook and bring it to her, the Respondent failed to safeguard the weapon by leaving it in her handbag on her bedroom floor. See *Case No. 79799/04*, signed Jan. 4, 2005 (officer guilty for failing to safeguard his firearm; he maintained the firearm under a pile of sheets and pillows in his bedroom closet, and it was stolen during a burglary).



PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222, 240 (1974). The Respondent was appointed to the Department on April 30, 1991. Information from her personnel folder that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Respondent has been found Guilty of failing to leave the scene of a police investigation when asked to do so by lawful authority. She has also been found Guilty of failing to safeguard her firearm. The Court recommends that the Respondent forfeit the 30 days she previously served on suspension. See Case No. 73327/98, signed Sept. 4, 1999 (18-year officer with no prior disciplinary record forfeited 30 vacation days for being disorderly and "causing a major scene" during a dispute with airline personnel at an airport; the officer ignored admonitions of responding officers and resisted arrest by fighting with them); *Case No. 79799/04*, supra (15 days for officer with two prior guilty findings for leaving gun under sheets and linens in closet).

**APPROVED**  
AUG 11 2010  
*[Signature]*  
RAYMOND W. KELLY  
POLICE COMMISSIONER

Respectfully submitted,

*D. Weisel*  
*by [Signature]*  
David S. Weisel  
Assistant Deputy Commissioner – Trials

POLICE DEPARTMENT  
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
POLICE OFFICER NANCY HURD  
TAX REGISTRY NO. 899366  
DISCIPLINARY CASE NO. 84547/08

In 2009, the Respondent received an overall rating of 3.5 "Highly Competent/Competent" on her annual performance evaluation. She received a rating of 4.0 "Highly Competent" in 2007 and 2008. She has been awarded three medals for Excellent Police Duty and one medal for Meritorious Police Duty [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

The Respondent has been the subject of one prior disciplinary adjudication. In 1998, she pleaded Guilty to engaging in unauthorized off-duty employment. For her misconduct, she forfeited 20 vacation days.

For your consideration.

*D. Weisel*  
*by M. Karyl*

David S. Weisel  
Assistant Deputy Commissioner – Trials